

July 9, 2013

Jeff S. Jordan
Supervisory Attorney, CELA
Federal Election Commission
Office of General Counsel
999 E Street, NW
Washington, DC 20463

Re: MUR 6734/Thomas Cushman

Dear Mr. Jordan:

I am writing on behalf of Thomas Cushman of Beckley, West Virginia, in response to the allegations set forth in the May 7, 2013, complaint, *In re John Canning, et al.*, filed by Citizens for Responsibility and Ethics in Washington (CREW), *et al.* (hereinafter "the Complaint"). The Complaint alleges that Mr. Cushman's campaign donations to individual federal candidates during the 2011/2012 election cycle exceeded the \$46,200.00 biennial limit in violation of 2 U.S.C. § 441a(a)(3)(A) and 11 C.F.R. § 110.5(b)(1)(i).

After reviewing campaign finance documents on the Federal Election Commission ("FEC") website and copies of Mr. Cushman's donation checks, our firm agrees that Mr. Cushman exceeded the biennial contribution limit on giving to individual federal candidates during the last election cycle. As discussed more fully below, there are several factors showing that Mr. Cushman's excessive contributions resulted from his lack of knowledge of campaign contribution limits and inadequate due diligence. Neither reason is offered as a legal defense. Mr. Cushman respectfully requests, however, that the Commission consider these reasons as extenuating and mitigating circumstances when deciding how best to resolve this matter.

Factual Background

Mr. Cushman first realized that he may have inadvertently donated more money to federal candidates than the law allows when he was alerted to the May 3, 2013, Huffington Post article referred to in the Complaint. The article named Mr. Cushman, along with other donors, of having exceeded the \$46,200.00 biennial limit.

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On May 14, 2013, the Commission mailed to Mr. Cushman's former address the notice of Complaint and instructions on how to respond to the same. Mr. Cushman received the forwarded notice of Complaint on Friday, May 24, 2013. Mr. Cushman immediately retained our firm to review records of his campaign donations and begin drafting a response to the Complaint. Based on the delay in receiving the Complaint, counsel requested a 20-day extension to respond. The Commission granted the request for an extension and set a new deadline of June 29, 2013. Counsel requested an additional two-week extension on June 26, 2013, which was also granted.

The Subject Campaign Contributions

Counsel compiled information from campaign filings found on the Commission's website and reviewed copies of checks made out to recipient committees for individual federal candidates and drawn on Mr. Cushman and his wife Sherry's joint checking account. Attachment A identifies Mr. Cushman's campaign donations to individual federal candidates during the 2011/2012 election cycle.¹ The list includes final recipients of joint fundraiser contributions.

Refund Efforts

After compiling the attached list, Mr. Cushman, through counsel, mailed hard-copy letters to the majority of recipient committees in an effort to help "cure" his excessive campaign contributions and remedy his oversight. Starting with the most recent candidates to whom he donated, we requested recipient campaign committees either reattribute half of Mr. Cushman's donation to his wife Sherry or refund the donation. Copies of representative sample letters are enclosed as Attachments B and C. The attached Recipient Donor List states the date in which a letter was mailed to each campaign and the status of each campaign's response to date.

Several campaigns responded positively to our letters and their campaign finance directors and treasurers are working with us to reattribute or refund Mr. Cushman's campaign donations, as indicated on the attached Recipient Donor List.

¹Please note, the May 3, 2013 Huffington Post article reported that Mr. Cushman contributed \$115,185.00 to individual federal candidates during the 2011/2012 campaign cycle, whereas our review of FEC filings and Mr. Cushman's records show that he contributed \$110,585.00 – a difference of \$4,600.00.

Matters in Extenuation and Mitigation

Mr. Cushman is employed by Phillips Machine Service, a mining equipment company founded in 1976 in Glen Daniel, West Virginia. Remarkably, Mr. Cushman joined Phillips Machine in 1979 as the Vice President of Marketing, a position he still holds after 34 years.

As more fully explained in Mr. Cushman's Declaration,² in recent years he and his wife Sherry have contributed to election campaigns of candidates who endorse legislation in support of the coal industry. Phillips Machine and its employees and their families depend upon the health of the coal industry. During the run-up to the 2012 presidential election—described as the most expensive election in U.S. history³—Mr. and Mrs. Cushman received an extraordinary number of requests for campaign donations from candidates who share their concerns about coal. Despite their strong interest in supporting such candidates, the Cushmans did not rely on professional advisors to manage their donations. Rather, Mr. and Mrs. Cushman responded to these solicitations by donating to these campaigns using hand-written checks drawn on a joint checking account. In sum, Mr. Cushman's excessive donations were not intentional, and instead reflect a lack of knowledge of campaign contribution limitation laws and inattentive recordkeeping.

We do not think imposing a civil penalty on Mr. Cushman is appropriate in this case. Mr. Cushman, by all accounts, is a law-abiding citizen who did not intend to exceed any campaign finance statutes. Mr. Cushman became a frequent donor in recent years, where there have not been, to our knowledge, any well-publicized excessive campaign contribution cases that would have alerted the general public to the importance of monitoring their campaign donations. Indeed, according to FEC records, only during the 2009/2010 election cycle did Mr. Cushman make significant campaign donations. He was, as he states in his Declaration, naïve to the ways of campaign finance limits. Further, Mr. Cushman does not recall any mention of the two-year aggregate contribution limits by the individual candidate committees soliciting funds.

Moreover, Mr. Cushman contacted our firm as soon he received a copy of the Complaint with an interest in resolving the allegations as quickly as possible. Our firm, with Mr. Cushman's assistance, took concrete actions to request the assistance of the campaigns to which Mr. Cushman donated funds. Undoubtedly there will be a mixed response. Three campaign committees reported they are in debt and have no funds to return. Another campaign committee has since closed, having transferred remaining funds to a different campaign. Fortunately, however, several committees are

² Mr. Cushman's Declaration is Attachment D to this letter.

³ Center for Responsive Politics, 2012 Election Spending Will Reach \$6 Billion, Center for Responsive Politics Predicts, (Oct. 31, 2012 2:33 PM), <http://www.opensecrets.org/news/2012/10/2012-election-spending-will-reach-6.html>.

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actively working with our firm to refund Mr. Cushman's donations and two campaign committees have already refunded his donations. To date, Mr. Cushman has received refund checks totaling \$4,850.00, with an additional \$4,900.00 in refunds forthcoming. Two other campaign committees reattributed a total of \$3,250.00 of Mr. Cushman's donations to his wife Sherry.

Further, our firm's efforts on Mr. Cushman's behalf do not end with this letter—we will continue to communicate with recipient campaign committees until we can be satisfied that every reasonable effort is undertaken to "cure" Mr. Cushman's excessive donations.

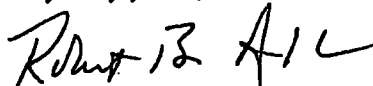
Requested Resolution

Mr. Cushman respectfully requests that in light of the foregoing, the Commission should decide to impose no sanctions and close the file. If, on the other hand, the Commission determines that further action is needed, we ask that the Commission permit Mr. Cushman to utilize the Commission's Alternative Dispute Resolution (ADR) process to resolve this matter.

Mr. Cushman is committed to complying with the law and will take steps to ensure that he does not ever again make the mistake of exceeding campaign finance limitations. Please also note, the attention received as a result of the publicity surrounding this matter has been terribly stressful on Mr. Cushman and his family. He understands that eventually this matter will become public record which has the potential to cause further reputational damage. For these reasons, should the Commission decide that the ADR route is not warranted and that this process should continue, we hope that the Commission allows Mr. Cushman to quickly enter into a settlement posture to facilitate a prompt resolution of this matter using the Commission's Pre-Probable Cause Conciliation procedures. Mr. Cushman is eager to turn his attention back to his family and devote his energy and resources to the benefit of the employees and families of Phillips Machine.

Should you have questions or concerns, please do not hesitate to communicate with me by telephone at 304-345-8900, or by email at rallen@kaycasto.com.

Very truly yours,



ROBERT B. ALLEN

RBA/rj

Attachments (4)